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Senate Bill _____
By _____

House No. HB0912
By Arriola, Jr.

AN ACT relative to medical staff privileges and to amend
Tennessee Code Annotated, Title 68, Chapter 11

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 68, Chapter 11, Part 2, is amended by adding the following language as a new section 205, and by renumbering the remaining sections accordingly:

Section 205(a) Purpose; findings. The purpose of this Act is to provide for the better protection of the public health through the development, establishment, and enforcement of standards (1) for the care of individuals in hospitals, (2) for the construction, maintenance, and operation of hospitals which, in light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals, and (3) that will have regard to the necessity of determining that a person establishing a hospital have the qualifications, background, character, and financial resources to adequately provide a proper standard of hospital service for the community.

(b) The Tennessee General Assembly finds: (1) That the citizens of Tennessee are not served by the inappropriate use of economic criteria in determining an individual's qualifications

for initial or continuing medical staff membership or privileges; (2) That the inappropriate use of economic criteria in determining an individual's qualifications for initial or continuing medical staff membership or privileges may deprive the citizens of Tennessee access to a choice of health care providers; (3) That it is in the interest of the people of the State of Tennessee to establish safeguards that -- (i) require hospitals and hospital based providers to explain to individual providers the reasons, including economic factors, for credentialing decisions, (ii) allow an opportunity for a fair hearing, and (iii) report economic credentialing to the Board for Licensing Health Care Facilities for further study. As used in this Section, "economic credentialing" means the use of economic criteria unrelated to quality of care or professional competency in determining an individual's qualifications for initial or continuing medical staff membership or privileges.

(c) Any hospital licensed or organized under this part shall, prior to the granting of any medical staff privileges to an applicant, or renewing a current medical staff member's privileges, request of the Health Related Boards information concerning the licensure status and any disciplinary action taken against the applicant's or medical staff member's license, except for medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act. The Administrator of the Health Related Boards shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of imposition of any discipline according to the medical practice statutes under Chapters 6 or 9 of Title 63. The Health Related Boards shall also submit any information indicating that the applicant or the medical staff member has been denied, or has previously surrendered, medical staff privileges at a hospital licensed under this part, or any equivalent facility in another state or territory of the United States. The Health Related Boards shall define by rule the period for timely response to such requests. No transmittal of such information by the Health Related Boards, under this part, shall be to other than the president, chief operating officer, chief administrative officer, or chief of the medical staff of a hospital licensed under this part. The

information so transmitted shall be maintained as confidential and privileged by the recipient hospital and shall not be subject to court subpoena; however, any such records and related information may be disclosed by the Health Related Boards according to the requirements of T.C.A. §63-1-117.

(d) All hospitals licensed under this part, except those hospitals defined in subsection 204(b), shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing, or denying medical staff membership and clinic staff privileges.

(1) Minimum procedures for initial applicants for medical staff membership shall include the following:

- (A) Written procedures relating to the acceptance and processing of initial applicants for medical staff membership.
- (B) Written procedures to be followed in determining an applicant's qualifications for being granted medical staff membership and privileges.
- (C) Written criteria to be followed in evaluating an applicant's qualifications.
- (D) An evaluation of an applicant's current health status and current license status in Tennessee.
- (E) A written response to each applicant that explains the reason or reasons for any adverse decision (including all reasons based in whole or in part on the applicant's medical qualifications or any other basis, including economic factors).

(2) Minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff shall include the following:

- (A) A written notice of an adverse decision by the hospital governing board.
- (B) An explanation of the reasons for an adverse decision including all reasons based on the quality of medical care or any other basis, including economic factors.
- (C) A statement of the medical staff member's right to request a fair hearing on the adverse decision before a hearing panel whose membership is mutually agreed upon by the medical staff and the hospital governing board. The hearing panel shall have independent authority to

recommend action to the hospital governing board. Upon the request of the medical staff member or the hospital governing board, the hearing panel shall make findings concerning the nature of each basis for any adverse decision recommended to and accepted by the hospital governing board.

(i) Nothing in this subparagraph (C) limits a hospital's or medical staff's right to summarily suspend, without a prior hearing, a person's medical staff membership or clinical privileges if the continuation of practice of a medical staff member constitutes an immediate danger to the public, including patients, visitors, and hospital employees and staff. A fair hearing shall be commenced within 15 days after the suspension and completed without delay.

(ii) Nothing in this subparagraph (C) limits a medical staff's right to permit, in the medical staff bylaws, summary suspension of membership or clinical privileges in designated administrative circumstances as specifically approved by the medical staff. This bylaw provision must specifically describe both the administrative circumstance that can result in a summary suspension and the length of the summary suspension. The opportunity for a fair hearing is required for any administrative summary suspension. Any requested hearing must be commenced within 15 days after the summary suspension and completed without delay. Adverse decisions other than suspension or other restrictions on the treatment or admission of patients may be imposed summarily and without a hearing under designated administrative circumstances as specifically provided for in the medical staff bylaws as approved by the medical staff.

(iii) If a hospital exercises its option to enter into an exclusive contract and that contract results in the total or partial termination or reduction of medical staff membership or clinical privileges of a current medical staff member, the hospital shall provide the affected medical staff member 60 days prior notice of the effect on his or her medical staff membership or privileges. An affected medical staff member desiring a hearing under subparagraph (C) of this paragraph (2) must request the hearing within 14 days after the date he or she is so notified. The requested hearing shall be commenced and completed (with a report and recommendation to the affected

medical staff member, hospital governing board, and medical staff) within 30 days after the date of the medical staff member's request. If agreed upon by both the medical staff and the hospital governing board, the medical staff bylaws may provide for longer time periods.

(D) A statement of the member's right to inspect all pertinent information in the hospital's possession with respect to the decision.

(E) A statement of the member's right to present witnesses and other evidence at the hearing on the decision.

(F) A written notice and written explanation of the decision resulting from the hearing.

(G) Notice given 15 days before implementation of an adverse medical staff membership or clinical privileges decision based substantially on economic factors. This notice shall be given after the medical staff member exhausts all applicable procedures under this Section, including item (iii) of subparagraph (C) of this paragraph (2), and under the medical staff bylaws in order to allow sufficient time for the orderly provision of patient care.

(H) Nothing in this paragraph (2) of this subsection (b) limits a medical staff member's right to waive, in writing, the rights provided in subparagraphs (A) through (G) of this paragraph (2) of this subsection (b) upon being granted the written exclusive right to provide particular services at a hospital, either individually or as a member of a group. If an exclusive contract is signed by a representative of a group of physicians, a waiver contained in the contract shall apply to all members of the group unless stated otherwise in the contract.

(3) Every adverse medical staff membership and clinical privilege decision based substantially on economic factors shall be reported to the Board for Licensing Health Care Facilities before the decision takes effect. These reports shall not be disclosed in any form that reveals the identity of any hospital or physician. These reports shall be utilized to study the effects that hospital medical staff membership and clinical privilege decisions based upon economic factors have on access to care and the availability of physician services. The Board for Licensing Health Care Facilities shall submit an initial study to the Governor and the General Assembly by January 1, 1996, and subsequent reports shall be submitted periodically thereafter.

(4) As used in this Section:

"Adverse decision" means a decision reducing, restricting, suspending, revoking, denying, or not renewing medical staff membership or clinical privileges.

"Economic factor" means any information or reasons for decisions unrelated to quality of care or professional competency.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This Act shall take effect on becoming a law, the public welfare requiring it.